WISCONSIN SUPREME COURT CALENDAR
AND CASE SYNOPSES
APRIL, 2011

The cases listed below will be heard in the Wisconsin Supreme Court Hearing Room, 231 East, State Capitol.

This calendar includes cases that originated in the following counties:

Marathon
Milwaukee
Pierce
Portage
Rock
Sauk
Trempealeau
Walworth

WEDNESDAY, APRIL 13, 2011

9:45 a.m.	08AP3170	-	Lake Beulah Management District v. DNR
	09AP2021	-	Lake Beulah Management District v. Village of East Troy
1:30 p.m.	09AP639	-	Tracy J. McReath v. Timothy J. McReath

THURSDAY, APRIL 14, 2011

9:45 a.m.	09AP438	-	David Bushard v. Steven A. Reisman, et al.
10:45 a.m.	09AP694-CR	-	State v. Rickey R. Denson
1:30 p.m.	09AP2784	-	Mark Klemm v. American Transmission Company, LLC

FRIDAY, APRIL 15, 2011

9:45 a.m.	09AP2917-D	-	Office of Lawyer Regulation v. Mitchell J. Barrock
10:45 a.m.	09AP1351-CR	-	State v. Gregg B. Kandutsch
1:30 p.m.	{09AP1469	-	Covenant Healthcare System, Inc. v. City of Wauwatosa
	{09AP1470	-	Covenant Healthcare System, Inc. v. City of Wauwatosa

TUESDAY, APRIL 19, 2011

9:45 a.m.	92AP3208-D	-	BAPR v. David V. Jennings
10:45 a.m.	09AP2934-CR	-	State v. Deandre A. Buchanan
1:30 p.m.	09AP191	-	Stupar River LLC v. Town of Linwood Board of Review

The Supreme Court calendar may change between the time you receive this synopsis and when the cases are heard. It is suggested that you confirm the time and date of any case you are interested in by calling the Clerk of the Supreme Court at 608-266-1880. That office will also have the names of the attorneys who will be arguing the cases.

Radio and TV, and print media wanting to take photographs, must make media requests 72 hours in advance by calling Supreme Court Media Coordinator Rick Blum at 608-271-4321. Summaries provided are not complete analyses of the issues presented.

WISCONSIN SUPREME COURT
WEDNESDAY, APRIL 13, 2011
9:45 a.m.

2008AP3170 is a review of a decision of the Wisconsin Court of Appeals, District II (headquartered in Waukesha), which reversed a Walworth County Circuit Court decision, Judge Robert J. Kennedy, presiding.

2009AP2021 is a review of a decision by the Wiscosnin Court of Appeals District II, which affirmed a Walworth County Circuit Court decision, Judge Robert J. Kennedy, presiding.

2008AP3170 Lk. Beulah Mgt. Dist. v. Wis. DNR and

2009AP2021 Lk. Beulah Mgt. Dist. v. Village of East Troy

These two cases arise from a dispute between the Lake Beulah Management District (Lake District) and the Village of East Troy (the Village) and the State Department of Natural Resources (DNR) over a proposed high-capacity well. Proponents argue the well is needed to support increased development; opponents charge that pumping millions of gallons of water per day will damage the lake and surrounding wetlands.

Some background: The dispute began in 2003, when the Village sought permission from the DNR to drill a well about 1,400 feet from the shore of spring-fed Lake Beulah. The Village proposed a capacity of about 1.44 million gallons per day, and presented a consultant's study that showed the lake would be unharmed by the well.

The DNR issued the permit in September 2003. The following month, the Lake Beulah Management District, formed in 1968 by the Town of East Troy, filed a petition arguing that the agency had failed to fulfill its responsibility to protect navigable waters, ground water and the environment as a whole in issuing the permit. The Lake District lost, first before an administrative law judge and then in the circuit court. The Lake District filed a motion for reconsideration, presenting a new study from a geologist who concluded that the well would lower lake levels. The motion was denied.

In 2006, the Lake District tried a different approach, passing an ordinance to prevent the well's operation. The circuit court concluded that the ordinance was void and unenforceable in that it conflicted with state law. The Lake District appealed, and the Court of Appeals affirmed. This ruling triggered 2009AP2021, one of the two cases now before the Supreme Court.

The circuit court nullified the ordinance, saying it conflicted with state law. The Court of Appeals affirmed this ruling. The Supreme Court is expected to decide whether governmental entities, municipalities, the Department of Natural Resources (DNR), or anyone else has the authority to consider adverse environmental impacts of high capacity wells with capacities to withdraw less than 2 million gallons per day.

The underlying dispute about the authority of the DNR continued. In September 2008, the circuit court, considering a revised petition brought by the Lake District, found that the DNR had a right to consider the public trust doctrine in deciding if the well would negatively impact the lake, but further found that there was "an absolute dearth of

any proof" of potential harm in this case. This ended the matter in the circuit court. The Lake District appealed, and the Court of Appeals affirmed in part and reversed in part. This ruling triggered 2008AP3170 in which the Supreme Court is asked to overturn one portion of a Wisconsin Court of Appeals opinion that says that the DNR may consider the Public Trust Doctrine when deciding whether to grant applications for new wells. The Village argues that the Public Trust Doctrine does not extend to groundwater, and that the DNR's authority is limited to what the Legislature enacted in the state groundwater law.

WISCONSIN SUPREME COURT
WEDNESDAY, APRIL 13, 2011
1:30 p.m.

This is a review of a decision of the Wisconsin Court of Appeals, District IV (headquartered in Madison), which affirmed a decision by Sauk County Circuit Court, Judge James Evenson, presiding.

2009AP639 McReath v. McReath

In this divorce case, the Supreme Court is asked to review whether a circuit court may double count the value of a divorcing professional's "professional goodwill" by first valuing the professional's business practice for property division purposes, and then awarding maintenance based upon the professional's earning capacity.

Some background: Timothy and Tracy McReath were married in 1988 and divorced in 2008. Timothy ran an orthodontics practice.

At the divorce trial, the parties disputed the value of the orthodontics business. Tracy's primary valuation expert relied on an income approach to valuing the practice. Using this method, Tracy's expert estimated that Timothy could sell his practice for $1,058,000. Timothy's expert used the income approach to value the practice at $415,000. Of this amount, Timothy's expert attributed $247,000 to the net value of the practice's assets and the remaining $168,000 to goodwill, which he opined was 95 percent "professional" goodwill and 5 percent "corporate" goodwill. Based on this breakdown, Timothy's expert concluded that the net value of the practice, exclusive of Timothy's professional goodwill, was $255,379. The circuit court accepted Tracy's expert's valuation, including the full $1,058,000 as divisible property and awarded Tracy half that amount.

In setting maintenance and child support, the circuit court examined the income available to the parties and calculated Timothy's earnings from his orthodontic practice by looking at his average net cash flow over the five preceding years and making some adjustments to that average. The court ordered Timothy to pay maintenance to Tracy at the rate of $16,000 per month for twenty years. Timothy appealed, arguing that the circuit court erred as a matter of law when it treated the professional goodwill portion of the valuation of his practice as divisible property. The Court of Appeals affirmed.

The Court of Appeals noted that the circuit court found that Timothy could sell his orthodontic practice for $1,058,000 and this amount was comprised of three separate components: the value of tangible assets, the value of corporate goodwill, and the value of professional goodwill. The Court of Appeals said there was no dispute that the professional goodwill was saleable and what was in dispute was whether the circuit court erred by treating the value of Timothy's saleable professional goodwill as divisible property.

Timothy argued that professional goodwill is not a divisible asset, even if it is saleable because it is inextricably linked to earnings. He argued it is unfair to divide the value of his professional goodwill as part of a property division and then also base maintenance payments, in part, on the earnings that flow from the same professional goodwill, something that is referred to as "double counting."

The Court of Appeals said neither party provided a clear definition of either "corporate goodwill" or "professional goodwill." The court said this was in part because there is a lack of clarity in prior Wisconsin law.

Timothy argues that every time a practicing professional in this state gets divorced, he or she, along with his or her spouse, the parties' counsel, and the presiding judge, all wade into a "quagmire." He says Wisconsin law expressly disfavors double counting marital assets, and published case law instructs circuit courts to take great care to avoid double counting. He says unfortunately, current law provides circuit courts with no clear framework for achieving that objective in cases involving a professional practice. He says practicing professionals, their spouses and divorce courts across the state will all benefit from the increased predictability, consistency, and fairness that clear guidelines governing property division and maintenance awards will promote.

Timothy asks this Court to create a black letter rule that personal goodwill in a professional practice is presumptively not a divisible marital asset, at least if maintenance is also awarded. This rule would be true for personal goodwill that is salable and that which is not.

Tracy contends that such a rule would often be unfair to the other spouse and that such an approach is generally inconsistent with Wisconsin's policy of fairly dividing assets between marital partners upon divorce.

WISCONSIN SUPREME COURT
THURSDAY, APRIL 14, 2011
9:45 a.m.

This is a review of a decision of the Wisconsin Court of Appeals, District III (headquartered in Wausau), which affirmed a decision by Pierce County Circuit Court, Judge Robert W. Wing, presiding.

2009AP438 Bushard v. Reisman and PressEnter, LLP

In this case, the Supreme Court is asked to examine business partnership law as it relates to a dispute between two estranged business partners who were ordered to "wind-up" their partnership. The petitioners, Steven Reisman and PressEnter, LLP, seek review of a Court of Appeals' order that directed Reisman and the plaintiff, David Bushard, to complete the wind-up of PressEnter. The order also required Reisman to reimburse PressEnter for funds he took as a salary, and dismissed Reisman's counterclaims against Bushard for breach of fiduciary duty and unjust enrichment.

Some background: Bushard and Reisman formed PressEnter, an internet service provider, as a partnership in 1995. They registered PressEnter as a limited liability partnership, but did not enter into a written partnership agreement. Bushard and Reisman contributed an equal amount of capital to the partnership's formation and initially were both involved in the business's day-to-day operations. Eventually they disagreed about how they should run the business.

In August 1999, Bushard notified Reisman by letter from his attorney that "Mr. Bushard has chosen to exercise his right to dissolve the partnership, PressEnter, L.L.P., effective Aug. 31, 1999." Around the same time, the men unsuccessfully tried selling PressEnter and Bushard essentially ceased his involvement in the business's management.

Reisman continued to operate the business for the next nine years. During this time, PressEnter paid Bushard and Reisman equal partnership draws out of the business's profits, as it had before Bushard's dissolution notice. In addition, Reisman began taking a "guaranteed draw"— or salary – in 2004. When Bushard learned of this practice two years later, he notified Reisman he objected to Reisman taking a salary. Reisman nevertheless continued taking guaranteed draws on the theory that he was running the company.

Bushard sought an order dissolving the partnership and requiring Reisman to repay money he had taken as a salary. Reisman filed a counterclaim alleging that Bushard breached his fiduciary duty to Reisman and was unjustly enriched by PressEnter's post-August 1999 profits. Reisman moved for summary judgment on the claim that he was not entitled to take a salary.

The circuit court concluded that Reisman was prohibited, as a matter of law, from taking a salary from the partnership without Bushard's agreement based on its interpretation of the governing statutes. The circuit court then directed the parties "to complete the winding up of the affairs of PressEnter ... and to report to the court in 60 days regarding the progress." It ordered Reisman to "account to and reimburse PressEnter... for the amounts which he took as guaranteed draws or salary," and dismissed his counterclaims for unjust enrichment and breach of fiduciary duty.

Reisman appealed. He claimed that the circuit court erred when it (1) ordered the parties to complete the winding up of their partnership, (2) directed Reisman to reimburse money he took as a salary, and (3) dismissed Reisman's counterclaims. The Court of Appeals affirmed, and this petition followed.

Reisman argues that the circuit court should not have ordered the parties to complete PressEnter's winding up without first considering "equitable principles." More specifically, Reisman has asked the Supreme Court to review if the Court of Appeals decision in this case conflicts with Estate of Matteson, 2008 WI 48, ¶25, 309 Wis. 2d 311, 749 N.W.2d 557.

WISCONSIN SUPREME COURT
THURSDAY, APRIL 14, 2011
10:45 a.m.

This is a review of a decision of the Wisconsin Court of Appeals, District IV (headquartered in Madison), which affirmed a decision by Rock County Circuit Court, Judge Michael J. Byron, presiding.

2009AP694-CR State v. Denson

This case examines whether the circuit court is required to conduct a colloquy with a defendant who chooses to waive his right not to testify.

Some background: Following a jury trial, Rickey R. Denson was convicted of false imprisonment and first-degree reckless endangerment. He was acquitted of sexual assault of a child, negligent handling of a weapon, and first-degree intentional homicide.

At the jury trial, Denson testified in his own defense. The court did not engage him in a colloquy regarding his right not to testify. Following his conviction, a no-merit notice of appeal was filed. The Court of Appeals issued an order directing counsel to confer with Denson regarding his desire to pursue post-conviction relief on the colloquy issue. Denson wanted to appeal on this issue. The Court of Appeals dismissed the no-merit appeal and reinstated the deadline for filing a motion for post-conviction relief.

Denson then filed a motion claiming he was not advised of his right not to testify by the trial judge. Denson contends the right not to testify is fundamental, and the right must be waived personally. He claimed the trial court's failure to conduct such a colloquy violated his due process rights and the right against compulsory self-incrimination.

Following an evidentiary hearing, during which Denson and his trial counsel testified, the circuit court denied the motion. The court determined that Denson knew about his right not to testify, knew of the consequences of not testifying, and knew he could decide not to testify even against the advice of his counsel. The post-conviction motion was denied.

Denson appealed, and in a summary decision, the Court of Appeals affirmed. The Court of Appeals applied State v. Jaramillo, 2009 WI App 39, 316 Wis. 2d 538, 765 N.W.2d 855, which held that a circuit court is not obligated to conduct a colloquy during trial to ensure the defendant knowingly and voluntarily waived his right not to testify. Jaramillo stated that while a colloquy is not required, it was recommended as good practice.

Denson contends that had he not testified in his own defense, there is a reasonable probability that the jury would have discredited the victim's testimony with respect to two counts and entered a judgment of acquittal on those as well.

Denson specifically asked the Supreme Court to review the following issues:

1. Should the constitutional right of a criminal defendant not to testify on his behalf and remain silent at trial be recognized as a fundamental right that can only be waived personally by the defendant with an on the record colloquy?

2. Should the only appropriate remedy, for failure to engage in an on-the-record colloquy regarding the right not to testify at trial, be a new trial?

3. Should the failure to engage in an on-the-record colloquy regarding the right not to testify be subject to a harmless error analysis?

The state contends that, consistent with all other waiver colloquy case law in Wisconsin, the appropriate remedy is a post-conviction evidentiary hearing. In addition, the state argues even if the Supreme Court decides that trial courts should henceforth conduct an on-the-record colloquy for the waiver of the right not to testify, Denson's conviction should be affirmed. The state says that is because he has already been afforded the remedy of a post-conviction hearing at which the state had the burden of proving that his waiver was knowing and voluntary.

WISCONSIN SUPREME COURT
THURSDAY, APRIL 14, 2011
1:30 p.m.

This is a review of a decision of the Wisconsin Court of Appeals, District III (headquartered in Wausau), which reversed a decision by Marathon County Circuit Court, Judge Gregory B. Huber, presiding.

2009AP2784 Klemm v. American Transmission Co.

This case examines Wis. Stat. § 32.28(3)(d) and litigation costs arising from a dispute over the value of land involved in an easement for land to be used for location of a high-voltage power transmission line.

Section 32.28(3)(d) provides that litigation expenses shall be awarded to the condemnee if "the award of the condemnation commission under Wis. Stat. § 32.06(8) exceeds the jurisdictional offer or the highest written offer prior to the jurisdictional offer by at least $700 and at least 15 percent. . . ."

More specifically here, the Supreme Court is asked to review whether § 32.28(3)(d) requires litigation expenses to be awarded to a property owner who conveys property in lieu of condemnation (meaning no jurisdictional offer was ever issued) and where the property owner then appeals the amount of the just compensation award and ultimately receives an amount that exceeds the amount originally paid by more than $700 and 15 percent.

Some background: American Transmission Company (ATC) had sought an easement from Mark and Jeanne Klemm to place high-voltage electric transmission lines across their property. ATC obtained an appraisal, which ATC provided to the Klemms, indicating the easement would decrease the value of their property by $7,750.

The Klemms agreed to accept the $7,750 compensation ATC offered in negotiations with the understanding they had the right to appeal the amount of the award. Accordingly, the Klemms conveyed the requested easement, which was recorded along with a certificate of compensation. The Klemms subsequently exercised their right to appeal. They then obtained an appraisal, which they presented to ATC three weeks prior to the condemnation commission hearing. The commission awarded the Klemms just compensation in the amount of $10,000.

The Klemms then sought litigation expenses in the circuit court, which held that the Klemms were entitled to litigation expenses under Wis. Stat. § 32.28(3)(d), even though they accepted ATC's negotiated offer and there was, consequently, no jurisdictional offer. ATC appealed, arguing the court misinterpreted § 32.28(3)(d), and the Court of Appeals reversed.

ATC argues that the Court of Appeals' decision will affect many condemnations and will result in different treatment for condemnees who convey their property in lieu of condemnation and similarly situated condemnees who do not.

WISCONSIN SUPREME COURT
FRIDAY, APRIL 15, 2011
9:45 a.m.

The Wisconsin Supreme Court is responsible for supervising the practice of law in the state and protecting the public from misconduct by lawyers. Lawyers must follow a code of ethics developed by the Court. When there is an allegation that a lawyer has acted unethically, the Supreme Court's Office of Lawyer Regulation (OLR) investigates, and, if warranted, prosecutes the attorney. A referee - a court-appointed attorney or reserve judge - hears the discipline cases and makes recommendations to the Supreme Court. The lawyer involved in this case has a practice in Brookfield..

2009AP2917-D Office of Lawyer Regulation v. Mitchell J. Barrock

In this case, Atty. Mitchell Barrock has appealed the referee's recommendation that his license to practice law in Wisconsin be suspended for four months for two counts of professional misconduct.

Barrock has been licensed to practice law in Wisconsin since 1987 and practices in Brookfield. In 1992, he was privately reprimanded by OLR's predecessor, the Board of Attorneys Professional Responsibility. In 2007, his law license was suspended for 60 days for violating of a number of supreme court rules.

The misconduct alleged in the OLR's complaint arose out of his representation of Marilyn Grainger, the niece of Anthony Schuster. In 2005, Grainger was appointed Schuster's guardian. Schuster's wife had predeceased him. Through a search of courthouse records, Grainger saw a copy of her aunt's will naming three churches as beneficiaries in the event that Schuster predeceased her. Grainger wondered if her uncle had signed a similar will. She retained Barrock to investigate whether a will existed. As part of the guardianship proceedings, Barrock unsuccessfully petitioned the court on Grainger's behalf to conduct limited discovery on whether Schuster had executed a will and whether he had the mental capacity to validly execute a will.

After the request to conduct formal discovery was rejected, Barrock conducted informal discovery, which consisted of speaking to and recording telephone conversations with various people who knew Schuster to determine if he had executed a will. One man recalled witnessing a document that he thought was Schuster's will although he was not entirely certain. Despite numerous inquiries, Barrock was never provided with any will executed by Anthony Schuster. However, Barrock's informal discovery led him to the conclusion that Schuster was not competent to execute a will in 2005.

Anthony Schuster died on January 14, 2009. On January 16, 2009 Barrock, on behalf of Grainger, filed a petition for formal administration of Schuster's estate in Waukesha County Circuit Court. The petition was a standardized court form which gave the petitioner the option of checking various boxes, depending on whether or not the decedent had executed a will. Box 6 stated, "The decent died leaving a will dated _____." Box 7 stated, "I have made diligent inquiry and I am unaware of any unrevoked will of the decedent and believe that the decedent died without a will." The

bottom of the form bore the notation, "This form shall not be modified. It may be supplemented with additional material."

Prior to Schuster's death, Barrock had contacted a Milwaukee County probate commissioner and asked, on a hypothetical basis, what would be the best way to file a petition for formal administration when there was conflicting evidence about the existence of and/or validity of a will. The commissioner's opinion was that the best option would be to check Box 7. Barrock also conducted independent research and spoke with other attorneys to determine how best to complete the petition. He ultimately checked Box 7. Barrock said although he had suspicions about the existence of a will, he did not have personal knowledge of the actual existence of any valid will. He said he did have overwhelming evidence from family members, doctors, an attorney for Schuster, case workers, and others that Schuster lacked the capacity to execute a will in 2005. Barrock felt that if a will from June of 2005 existed, he could not in good conscience attest to its validity as required by box 6 of the petition.

Barrock gave notice of the administration of the estate to all known interested parties, including an attorney who he thought might have drafted Schuster's will. He also published notice in a local newspaper and said he anticipated that any purported valid will would be filed with the court. Within days two essentially identical wills executed by Schuster surfaced, one from 1982 and a second from June of 2005. Both wills named Schuster's deceased wife as the primary beneficiary and three churches as contingent beneficiaries. Barrock said that from any practical perspective, the unrevoked 1982 will moot any dispute that might have existed as to the validity of the 2005 will. Barrock immediately notified the attorneys for the churches that a petition for formal administration had been filed. A negotiated compromise was reached among all parties within days. The probate court never made any finding about the validity of the 2005 will.

The OLR's complaint alleged that by indicating on the probate form that he believed Schuster died without a will Barrock engaged in misconduct by counseling and/or assisting Grainger in conduct that Barrock knew was criminal or fraudulent. The complaint also alleged that Barrock knowingly offered evidence to the court that he knew to be false and that he engaged in conduct involving dishonesty, fraud, deceit or misrepresentation.

The referee found that the OLR met its burden of proof as to all counts of misconduct. The referee recommended that Barrock's license be suspended for four months and that he be required to pay the costs of the proceeding. Barrock has appealed, arguing that the evidence was insufficient to prove that he violated any supreme court rule. In the event the supreme court does find that he engaged in misconduct, Barrock argues that a public reprimand is a sufficient sanction.

The Supreme Court is expected to decide whether Barrock engaged in misconduct and, if so, the appropriate sanction.

WISCONSIN SUPREME COURT
FRIDAY, APRIL 15, 2011
10:45 a.m.

This is a review of a decision of the Wisconsin Court of Appeals, District III (headquartered in Wausau), which affirmed a decision by Marathon County Circuit Court, Patrick M. Brady, presiding.

2009AP1351-CR State v. Kandutsch

In this drunken driving case, the Supreme Court is asked to review if a report from an electronic monitoring device may be admitted into evidence without expert testimony as to the scientific validity, accuracy, and reliability of the device, and if a report generated by an electronic monitoring device is inadmissible hearsay.

Some background: Police received a call that Gregg B. Kandutsch was trying to enter the home of his estranged wife. He severely injured himself while breaking into the house and was taken to a hospital. A blood draw revealed a blood-alcohol content of 0.23 percent. When asked how the defendant would have arrived at her home, his wife pointed out a green van in a nearby parking lot. Kandutsch was charged with OWI, fifth and subsequent offense.

At the time of the incident, the defendant was being supervised under an electronic monitoring program that noted if Kandutsch moved out of range – about 150 feet away from the radio-frequency receiving device. The state introduced daily summary reports showing Kandutsch's transmitter went out of range approximately 20 minutes before police received a call that the defendant was trying to break into his estranged wife's house. The state argued that, based on the timing of events, the defendant must have been intoxicated by the time he started driving.

Kandutsch objected to the admission of the daily summary reports, arguing that the state supplied an insufficient foundation and that they were inadmissible hearsay. The circuit court admitted the evidence, concluding they were properly authenticated and generated in the ordinary course of business. A jury found Kandutsch guilty of fifth or subsequent offense OWI. He appealed, and the Court of Appeals affirmed.

The Court of Appeals concluded that the electronic monitoring system's operation is not so unusually complex or esoteric as to demand the assistance of expert testimony. It also concluded that readings generated by a machine are generally excluded from the realm of hearsay because they are the result of a process, not a statement by a declarant.

Kandutsch maintains the report should not have been admitted into evidence absent expert testimony attesting as to its scientific validity, accuracy and reliability and that the report constituted inadmissible hearsay. He contends the Supreme Court has not determined whether a report generated by an electronic monitoring device is hearsay or what foundation is necessary in order for such a report to be admitted as evidence of an accused whereabouts at the time of a crime. He points to Klarkowski's testimony that approximately 2,000 people each day are fitted with electronic monitoring devices. He says given the wide-spread use of such devices, resolution of this issue will have statewide impact.

WISCONSIN SUPREME COURT
FRIDAY, APRIL 15, 2011
1:30 p.m.

This is a review of a decision of the Wisconsin Court of Appeals, District I (headquartered in Milwaukee), which reversed a decision by Milwaukee County Circuit Court, Judge Elsa C. Lamelas, presiding.

2009AP1469/2009AP1470 Covenant Healthcare System, Inc. v. City of Wauwatosa

In this case, Covenant Healthcare Systems, Inc. (Covenant) asks the Supreme Court to review a Court of Appeals' decision reversing a circuit court order and judgment finding St. Joseph Outpatient Center to be a tax exempt property under § 70.11(4m)(a)(2007-08).

Some background: St. Joseph Outpatient Center (the clinic) is a freestanding outpatient medical facility located Wauwatosa. From 2003 through 2006, the clinic was owned and operated by St. Joseph Hospital Regional Medical Center, Inc., a Wisconsin non-profit corporation. St. Joseph's sole member was Covenant, an Illinois non-profit corporation.

The building in which the clinic is located was originally owned by Covenant. Covenant built a five-story building for the clinic and transferred the building to St. Joseph by accounting entries. Covenant continued to own the land and leased it to St. Joseph. The clinic was located on the first, third, and fourth floors of the building. St. Joseph leased the space on the second floor to an affiliated corporation and leased the space on the fifth floor to unrelated physicians and healthcare professionals. Covenant did not seek tax exemptions for the second or fifth floors of the building. The building contained public space on each of the five floors and the lower level and the property included a separate parking structure and surface parking areas.

In 2003 through 2006, Covenant filed timely property tax exemption requests with the City of Wauwatosa assessor, seeking property tax exemptions for the clinic and the land on which it is located. The assessor denied all requests. Covenant paid the taxes assessed on the property for each year. It then filed suit against the city in an effort to recover the taxes it paid. A nine-day bench trial was held. On March 30, 2009, the trial court issued a lengthy written order concluding that the clinic was property tax exempt.

Wauwatosa appealed. The Supreme Court denied a petition to bypass in December 2009. The Court of Appeals, with Judge Ralph Adam Fine dissenting, reversed and remanded, holding that the clinic is a doctor's office and thus not qualified for a tax exemption under the statute.

Covenant has asked the Supreme Court to review if the Court of Appeals erred when it concluded that the clinic was "used ... as a doctor's office" and, is, therefore, ineligible for a property tax exemption and if the clinic was reasonably necessary to the efficient functioning of Wheaton Franciscan Healthcare St. Joseph, Inc. n/k/a Wheaton Franciscan, Inc. ("St. Joseph Hospital"), thereby satisfying the requirement that the clinic be used for the purposes of a hospital?

In addition, covenant asks if the clinic was ineligible for the exemption because the "net earnings" of St. Joseph Hospital "inure[d] to the benefit" of Covenant and because it was used for "commercial purposes."

WISCONSIN SUPREME COURT
TUESDAY, APRIL 19, 2011
9:45 a.m.

The Wisconsin Supreme Court is responsible for supervising the practice of law in the state and protecting the public from misconduct by lawyers. Lawyers must follow a code of ethics developed by the Court. When there is an allegation that a lawyer has acted unethically, the Supreme Court's Office of Lawyer Regulation investigates, and, if warranted, prosecutes the attorney. A referee – a court-appointed attorney or reserve judge – hears the discipline cases and makes recommendations to the Supreme Court.

92AP3208-D Board of Attorneys Professional Responsibility (n/k/a Office of Lawyer Regulation) v. David V. Jennings III

Former lawyer David V. Jennings III, who practiced in the Milwaukee area, initially sought reinstatement of his revoked law license in 1999, but withdrew his petition following an investigation. In 2007, he again sought reinstatement, which was denied. See In re Disciplinary Proceedings Against Jennings, 2009 WI 26, 316 Wis. 2d 6, 762 N.W.2d 648. Reinstatement of a law license requires clear, satisfactory and convincing proof of several requirements, including that his resumption of the practice of law would not be detrimental to the administration of justice, that he has a proper understanding of the ethics standards that govern the practice of law, and that he will act in conformity with them.

Here is the background: Jennings was first admitted to practice law in 1975. In May 1986, Jennings was appointed to handle certain matters involving two companies in bankruptcy proceedings. While doing so, he embezzled about $550,000 from them over several years. According to the Office of Lawyer Regulation (OLR), Jennings also embezzled between $85,000 and $100,000 from his mother's living trust. Jennings pled guilty to crimes related to the embezzlement and was sentenced to 27 months in prison followed by probation. Restitution was ordered. In 1993, the Supreme Court revoked his law license after he filed a Petition for Voluntary Revocation of License to Practice Law.

Jennings argues that he is now fit to practice law. He points out he has settled his tax liabilities, paid partial restitution and has been licensed as a real estate broker in good standing. He also notes that a number of individuals have provided testimonials for him.

The OLR, on the other hand, argues that the referee who heard this matter correctly concluded Jennings has failed to demonstrate his resumption of the practice of law would not be detrimental to the administration of justice or subversive to the public interest, and his lack of remorse indicates his failure to appreciate the attitude necessary toward the standards imposed on members of the bar. The OLR maintains that Jennings has never made full restitution to his victims, is not attempting to do so now, and initially failed to disclose his law license revocation to the Real Estate Board. It says he maintained for a number of years the sums he embezzled were merely loans, failed to show remorse for his misconduct, has worked to protect his own and his family's financial well-being to the detriment of victims of his embezzlement and, in 2005, was arrested for first-offense drunk driving.

The Supreme Court will decide whether Jennings' license to practice law in Wisconsin should be reinstated.

WISCONSIN SUPREME COURT
FRIDAY, APRIL 19, 2011
10:45 a.m.

This is a review of a decision of the Wisconsin Court of Appeals, District III (headquartered in Wausau), which affirmed a decision by Trempeauleau County Circuit Court, Judge John A. Damon, presiding.

2009AP2934-CR State v. Buchanan

In this case, the Supreme Court examines issues related to Deandre Buchanan's conviction for possession of less than 200 grams of THC or less with intent to deliver after police recovered the drug while searching his vehicle during a traffic stop.

The key issue here is whether case law supports the arresting officer's decision to use the petitioner's arrest history as part of the basis for performing a protective search following a routine traffic stop.

Some background: At approximately 9:37 p.m. on March 4, 2009, state trooper Randy Gordon clocked Buchanan's vehicle travelling at 78 miles per hour in a posted 65 mile-per-hour zone. After Gordon activated his emergency lights, he noticed Buchanan weaving within the lane. Using his vehicle's spotlight, Gordon could see Buchanan moving his shoulder and arm up and down. Gordon would later testify this movement "looked like [Buchanan] was stuffing something either underneath the seat or under his foot area."

Buchanan stopped his vehicle and Gordon informed Buchanan he was speeding. Buchanan explained his speedometer was broken. Gordon asked for Buchanan's license, and then returned to his squad car. Throughout the exchange, Buchanan appeared very nervous, and his hands were shaking.

While checking Buchanan's license, Gordon learned of a pending charge for possession with intent to deliver. Gordon also learned that Buchanan had multiple previous arrests for murder, armed robbery and false imprisonment. Gordon waited for a backup officer before approaching Buchanan again.

Concerned that Buchanan was armed, the officers opted to conduct a protective search of Buchanan and the portions of the vehicle accessible from the driver's seat. The pat-down search produced no weapons. As Gordon bent down to inspect the area around the driver's seat, he smelled marijuana and noticed a green plant underneath the ashtray. Gordon tested the plant, confirmed it was marijuana, and arrested Buchanan.

Buchanan moved to suppress the drug evidence. The circuit court denied the motion and the matter proceeded. On appeal, the key issue was whether the protective search violated Buchanan's constitutional rights because it was not based on reasonable suspicion that he was dangerous. The Court of Appeals affirmed and this petition followed.

Buchanan asked the Supreme Court to review if, under the totality of the circumstances, the trooper had an objectively reasonable suspicion that Buchanan was armed and dangerous, and if the trial court erred in concluding that the marijuana stem found in Buchanan's vehicle was in "plain view?"

WISCONSIN SUPREME COURT
TUESDAY, APRIL 19, 2011
1:30 p.m.

This is a review of a decision of the Wisconsin Court of Appeals, District IV (headquartered in Madison), which affirmed a Portage County Circuit Court decision, Judge Thomas T. Flugar, presiding.

2009AP191 Stupar River v. Town of Linwood Board of Review

In this case, the Supreme Court examines whether a property assessment was proper, and whether Stupar River, LLC is entitled to reimbursement and interest due to an over-assessment pursuant to Wis. Stat. § 74.37(5).

Some background: Stupar River, LLC, owns the Wisconsin River Country Club in the town of Linwood in Portage County. It objected to its tax assessments for 2003, 2004, and 2005. It did not object to its assessment in 2006, however, because the town had reduced the assessment to an amount consistent with the amounts Stupar River had proposed in 2005. The circuit court issued an order directing the town to reassess the property for 2003-2005 or, in the alternative, provide a rationale explanation as to why the property had decreased in value in 2006.

In response to the order, the town submitted the assessor's letter explaining he reduced the assessment in 2006 because the Department of Revenue's major class comparison report issued in 2005 showed that commercial class was not in line with other classes of property during the year. The assessor said because the difference was greater than 10 percent, he felt an adjustment to the overall class was needed to bring it back in line with other classes of properties.

The circuit court concluded that the town had provided a satisfactory reason for reducing the assessment for 2006 and, therefore, did not need to reassess the property for the years 2003-05. The court affirmed the town board of review's decision, and the Court of Appeals affirmed.

The Court of Appeals concluded it was incorrect to assume that the town assessor had reduced the property's 2006 assessment to reflect its true market value. The Court of Appeals explained that the reduction in the 2006 assessment was not based on a change in the fair market value but rather based on an attempt to equalize market value in response to a Wisconsin Department of Revenue report.

Stupar River asked the Supreme Court review three issues: (1) whether the assessor can value real property at something other than fair market value; (2) whether Stupar River, LLC, is entitled to be assessed in 2003-05 at the same value as in 2006; and (3) whether Stupar River is entitled to reimbursement in interest for an over-assessment pursuant to Wis. Stat. § 74.37(5).